

- (a) the exercise of appeal, or complaint.
- (10) discriminate or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or performance of others.
- (c) the head of each agency shall be responsible for the prevention of prohibited personnel practices.

Appellant filed a complaint against Ms. Sandralyne Esco and Mr. Joseph Stack on November 2, 2001. This complaint was filed and sent to The Office of Special Counsel before appellant termination letter dated November 6, 2001 was sent to her home address by certified mail. Appellant was out on emergency sick for surgery in which Ms. Esco refused to approve leave because she did not believe the validity or the seriousness of the doctor's certificate was authentic and was not a plot to get out of work. Throughout appellate's employment, appellant employment, appellant missed one day of work (sick leave on October 24) to be evaluated. Through out the stressful, harassing tactics Ms. Esco inflicted on the appellant, the appellant was constantly set up for disaster, ridiculed, no training, and was set up failure not to perform successfully in Ms. Esco' section.

Appellant 's deteriorated health condition under the U.S.C. Title 42 Section 1215 The Office of Special Counsel did not impose any disciplinary action against the IRS, Ms. Esco, or Mr. Stack, the complaint was dismissed. The complaint specifically listed discrimination and prohibited personnel practices applied by Ms. Esco and Mr. Stack. Ms. Esco refused to acknowledge the validity of the doctor's certificate. According to the Office Management, an employee must give the supervisor/manager a doctor's certificate stating the prognosis, the length of time needed for the illness, and the nature of the relative (child, spouse, and parent).³

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Sec. 550.706 Criteria for meeting the requirement for involuntary separation. (a) An employee who resigns because he or she expects to be involuntarily separated is considered to have been involuntarily separated if the employee resigns after receiving - (1) Specific written notice that he or she will be involuntarily separated by a particular action effective on a particular date; or (2) A general written notice reduction in force or transfer of functions which - (1) Is issued by a property authorized agency official; (ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in Sec 351.402 of this chapter) by a particular date (no more than 1 year after the date of notice); and (iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes. *** (c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation).

U.S. Office of Personnel Management Janice R. Lachance Director sent out a memorandum for directors of personnel management concerning "Sick Leave Policy", President Clinton announced on June 10, 2000, stating the Federal Government is establishing an expanded sick leave policy for federal employees. This policy included employees may take up to twelve weeks of sick each year to care of a sick family member (serious health condition). Ms. Esco violated U.S.C. 5 CFR 630.1202 code stating, "You are pretending to be sick, I'm only used to permanent employees asking for time off, you are a probational employee and you can not ask for leave off." According to OPM's policy a doctor's certificate should be presented including the prognosis, the length of time requesting off, date of surgery, and any medical restrictions pertaining to the employee's health. The appellant's physician faxed the certificate to Ms. Esco's office with the faxed number underline stating the urgency of appellant's health. The appellant presented the fax certificate attached with a formal letter of leave request to her supervisor (Ms. Esco). Also at Ms. Esco's request appellant seeking "Employee's Assistance", the appellant meet with a psychiatrist and received a mental evaluation dealing with post traumatic stress. Appellant's sick leave was not approved verbally or written, Ms. Esco refused to accept the contents of the certificate and leave request.

November 5, 2001 appellant telephoned Mr. Stack (spoke to Angelle, Mr. Stack's secretary), also left Mr. Gordon, and Ms. Esco offices leaving a detailed voice mail stating, "I am unable to report to work due to the stress and the upcoming surgery, my health is in danger and I have several doctors appointments and test to take starting November 5, 2001 before my surgery. Appellant did not hear from on one until November 19, 2001 from Mr. Roland Gordon, union president. Mr. Gordon (union president) and Ms. Wheeler (union representative) telephoning appellant's home explaining, "Mr. Stack is demanding your resignation because you misrepresented yourself by falsifying her education, taxes, and marital status he wants you out the building in the worse way." On November 20, 2001 Mr. Stack (management) telephoned appellant's home angrily demanding the resignation letter. Cummingham v. Air Force No. 433-60 F 3d (1973). Mr. Gordon and Ms. Wheeler telephoned appellant dictating what to write in the resignation

letter stating, "Your health will not let you return back to work". Ms. Wheeler went to appellant's home and retrieve the letter from appellant in which it was presented to Mr. Stack before the stipulated deadline of 5:00 p.m. November 20, 2001. Shultz v. Department of Navy, Christie v. United States 518 F.2d 594 (1975). Appellant's elderly mother witnessed all conversations between Ms. Diana M. Williams via telephone with Ms. Wheeler, Mr. Gordon, and Mr. Stack. Mrs. Williams also witnessed Ms. Wheeler come into the appellant's home address inside to retrieve the letter to personally give to Mr. Stack.

Appellant was coerce and under duress concerning all matters of the resignation letter. Appellant did not use or have freedom of choice to act in a comprehensible manner. A conspiracy between Ms. Esco, Mr. Stack, Mr. Gordon, and Ms. Wheeler master mind the resignation letter from appellant due to her serious health condition (an illness which Ms. Esco replied that the appellant made up). U.S.C. 38 § 7461 is adverse action. Let the truth be told appellant was effectively terminated November 6, 2001. The management staff used a two-week open window waiting to get in touched with Ms. Williams about their plans of termination her and making sure she would not have any recourse of filing a wrongful termination complaint against the IRS. Ms. Williams had no knowledge of termination letter the letter was via certified mail to her home address. This tactic surely details coercion and corruption within the management of the IRS. Management had already blocked her from filing an Equal Opportunity charge of discrimination against Ms. Esco. Ms. Esco retaliated against appellant when a second grievance was filed on November 2, 2001 by the union the president. Grievance was filed on "Supervisor's reprisal and retaliation against employee."

Appellant filed a complaint with the Office of Special Counsel on November 2, 2001 under the "Whistle Blower Protection", stipulating discrimination and prohibited personnel practices. Appellant amended her complaint on November 23, 2001 concerning forced termination letter dated November 6, 2001, and Ms. Esco's informing staff employees and managers' specific confidential information concerning the surgery, marital status, income tax, and education information. Under the Whistle Protection Act (WPA) 5U.S.C. Section 2302.⁴

⁴ (a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) for this section

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

8. Take or fail to take, or threaten to take or fail to take, personnel action with respect to any employee or applicant for because of

A. Any disclosure of information by an employee or applicant which the employee or applicant reasonably believes that evidences:

(i) a violation of any law rule or regulation
or
(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

The WPA of 1989 as amended 1994, protects government employees from retaliation for disclosing potential embarrassing or damaging information about government operations. The WPA proscribes the following actions by supervisor, if an employee makes a relevant disclosure as pursuant to section b (8). It enacted to increase protection for whistleblowers by prohibiting adverse employment practices. According to Williamson v. NLRB, 59 M.S.P.B. 640 (1983) the court remanded the dismissal of appellant's appeal, and stated that because the appellant was engaged in whistle blowing activity protected under 5 U.S.C. Section 2302 (b) (8), the appeal must be remanded.

In this particular instance, appellant disclosed to her immediate supervisor, union representative, and manager that she was not trained to handle the job of three employees. The failure to train is in violation to the collective bargaining agreement and the IRS Department of Treasury standard operating procedures and policies. This was a disclosure which evidences a violation of a rule or regulation. Thus, reporting the failure to train is a prohibited personnel practice which falls under the WPA. The MSPB has jurisdiction to appellant Whistleblower protected activity, and is entitle to hearing on the matter. Furthermore, appellant reported workers' compensation injury in August of 2001. The appellant workers' compensation incident was not process and was lost by the IRS, all medical bills were billed to appellant's personal insurance. Appellant received two letters from Mr. Schwartz's (Mr. Stack replacement) with two different signatures stating there is no record of the accident. The matter was turned over to the IRS workers compensation department inquiring for an investigation in which is was terminated by Ms. Esco. Surely, this is in retaliation for asserting a workers compensation claim. This is in reprisal for reporting an illegal employment practice. This is a protected activity that falls under 5 U.S.C. Section 2302 (b) (8).

In addition, October 11, 2001, the appellant a hostile work environment in conjunction with the union and a grievance process was initiated. On November 2, 2001 the appellant reported several incidents of harassments,

Ms. Esco's refusal to accept and acknowledge a doctor's certificate for emergency surgery, the agency committed a retaliatory and constructed discharge to appellant. Surely the October 11 and November 2 grievances and other series of harassment constitutes a disclosure of a prohibited protection activity and is therefore, a violation under 5 U.S.C. Section 2302 (b) (8) which the MSPB has jurisdictions over. Moreover, the Civil Rights Act as amended in 1991 prohibits retaliation.

The MSPB and agency argue that although, the case law show that an employee during her probationary period generally does not have the right to appeal her termination. See: 5 C.F.R. Section 315.806 (b), an exception exists if an employee, terminated during her probationary period alleges that her termination was reprisal for protected whistle blowing actions and first sought corrective action from the Office Special Counsel. Appellant's case is retaliatory and reprisal because management had full knowledge of the complaint to the Office of Special Counsel. Also Mr. Stack telephoned appellant demanding and placing special stipulations on the appellant ignoring the fact that she was just release from the hospital. There should not have been any communication with appellant due to seriousness of her health. Mr. Stack violated prohibited personnel practices because he acted for the agency and not the appointing authority in a personnel matter. Ms. Williams accepted a jot attached with a formal letter from the appointing authority in which a carbon copy sent to Mr. Stack upon acceptance of the job. Under those circumstances, the employee may file an individual right of action appeal with the board. To establish the Board's jurisdiction over an IRA appeal, the appellant must show that (1) she engaged in protected whistle blowing activities; (2) she was subsequently affected by personnel action as defined at 5 U.S.C. Section 2302 (1) (2); and (3) she sought corrective action from Office of Special Counsel and OSC has either (a) terminated its investigation or (b) 120 days have expired since the filing of OSC complaints.

In this particular situation, appellant has engage in personnel in protected whistle blowing activity by reporting to her supervisor and manager that she has not been train as per the standard operation policy of the IRS and Department of Treasury and the union agreement. She also reported activity

in violation of 5 U.S.C. Section 2302 and a grievance was process with the union. On October 17, 2001 appellant try to file an EEOC charged against Ms. Esco but to no avail, she was not successful, appellant found out later Ms. Esco is a former EEOC counselor and was given the heads up of appellant's motives. Appellant sought corrective action with OSC and thereafter, appellant was terminated by way of a constructive discharge by certified mail to her home address. Appellant meet the requirements for a WPA action. Appellant has additional witnesses and evidence as well to prove that she was retaliated against in violation of 5 U.S.C. Section 2302. Nevertheless, appellant states and asserts that she has been constructively discharged, prohibited from securing another position, on the job injury, and her resignation was under duress and coercion due to Mr. Stack telephoning her home. The MSPB and circuit court ignored the specific details of information that was reported to the Office of Special Counsel, Congressman William Jefferson's office, and Department of Labor Relations Authority, that she was retaliated and discriminated by Ms. Esco and Mr. Stack. These problems occurred due to the obstruction of employment Mr. Stack displayed on September 13, 2001 in a hostile meeting with Ms. Esco, Mr. Gordon (union president), and appellant. Mr. Stack stated, "Diana, another manager has requested you to be placed in his group. I do not know if you had something to do with this or not. I am not letting you moved to another group. Ms. Esco is the best manager I have. She has scored the highest scores out of all of my managers. You need to stay in her group where you will learn a lot." This is prohibited personnel practices and obstruction of employment. The union president file two grievances stipulating "Manager retaliation against employee need to be moved" and "Manager reprisal against employee needs to be moved." The agency and the managers displayed adverse action towards appellate which constituted filing a complaint with the Office of Special Counsel on November 2, 2001, management dated the termination letter November 6, 2001. This is not a coincident, Ms. Esco removed a copy of appellant's complaint from her desk when she was not present.

Complaint in Appendix D

TIGTA Investigation

The statute relevant to U.S.C. 42 § 2000e concerning investigations, Ms. Esco launched a TIGTA investigation against me concerning my federal taxes, martial status, education, property taxes, and inheritance in which civil court documents were presented to agent McFarland. Ms. Esco did not have any conclusive evidence of any violations of embezzlement, filing incorrect taxes, misappropriation of funds, or falsifying records, Ms. Esco went on her personal assumption on a heritage I received in July 2001 concerning property when she was questioned why the IRS placed liens on the property in error by mistaken identity. Ms. Esco did not accept the fact from the mortgage conveyance office documentation that this organization did not accurately search for the right taxpayer who violated his or her federal taxes. This was IRS incompetence of doing their job inaccurately.

Appellant was given a twenty-hour notice (September 27, 2001) by Ms. Esco that she was scheduled for a meeting with TIGTA investigator and she had no knowledge what it was pertaining about. Appellant meet with agents Jim McFarland and Melissa Chedotal on September 28, 2001. They stated, "Ms. Esco wrote a letter to them stating Diana Williams has incorrectly filed her income taxes, her marital status is married and she lied about her education." Ms. Esco, agents Mr. McFarland, and Ms. Chedotal violated U.S.C. 42 § 2000e.⁵

5 (a) Examination and copying of evidence related to unlawful employment practices in connection with any investigation of a charge filed under section 2000e- of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.
(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed.

MEDICAL LEAVE-SICK/ANNUAL LEAVE

Appellant accrual sick/annual after becoming with the IRS on a bi-weekly basis. Appellant accrual leave started June 4, 2001 until November 20, 2001. Appellant did not have a large combination of sick and annual leave when she was told about a life threatening illness. Appellant presented Ms. Esco (supervisor) with a formal letter of request attached with a faxed doctor's certificate and advance leave slip asking for the surgery time off. The documentation presented to Ms. Esco was in accordance with OPM's leave policy "Medical Certification". Ms. Esco violated Title – administrative personnel chapter 1 – Office of Personnel Management – Absence and Leave Section 630.912, Prohibition of coercion.⁶ Also Ms. Esco violate 630.1207 Prohibition of Medical Certification.⁷ Appellant's request to have the surgery was not approved by Ms. Esco. The circuit court erred their judgment concerning Ms. Esco's refusal of granting leave where President Clinton mandated all federal employees are entitled to take leave for "Serious Medical Illness" on June 10, 2000.

Medical documentation in Appendix F

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An employee may not directly or indirectly intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce, any right such employee may have with respect of donating, receiving, or using annual leave under this subpart. (b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Sec. 630. 1207. Medical certification. (a) An agency may require that a request for leave under Sec. 630.1203 (a) (3) or (4) be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An agency may waive the requirement for an initial medical certificate in a subsequent 12-month period if the leave under Sec. 630. 1203 (a) (3) or (4) is for the same chronic or continuing condition. (b) The written medical certification shall include - - (1) The date the serious health condition commenced; (2) The probable duration of the serious health condition or specify that the serious health condition is a chronic and frequency of episodes of incapacity; (3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.

INVOLUNTARY RESIGNATION

In certain limited circumstances, a resignation may constitute as adverse action. An involuntary resignation is an adverse action when it was obtained by duress or coercion. Appellant received several telephones from Mr. Stack, Mr. Gordon, and Ms. Wheeler (conspiracy team) using deceptive means of coercing appellant to write a resignation letter. Ms. Wheeler dictated to appellant who under the influence of several medications one of them "800 mg" was told verbatim what to write in the resignation letter. Ms. Wheeler went to appellant's home address and extracted the document. The IRS management and the union president conspired to deceive appellant by coercing her in a fragile state of mind intoxicated with medication to write a letter of resignation. Appellant did not use or have freedom of choice to comprehend the scope of the matter concerning the letter. The IRS employees displayed prohibited personnel practices. Appellant was a collective bargaining union employee, the union personnel teamed with management deceived employee in lieu of gaining the resignation letter. This also closed the door to the appellant to file a wrongful termination suit against the agency.

The appellant file a complaint on April 10, 2002 with her district Congressman William Jefferson who acknowledges the complaint. The complaint was forward to the IRS Labor Relations Mr. John St. Cyr who refused to answer the complaint and have a congressional review. Appellant file a formal complaint with the Labor Board Relations Authority asserting prohibition of management refusing the appellant rights to have union representation. Mr. James E. Petrucci assigned appellant Case No. DA-CA-02-0542. Ng v. Department of Treasury F 2d (Fed. Cir. 2004).

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Sec. 550.706 Criteria for meeting the requirement for involuntary separation. (a) An employee who resigns because he or she expects to be involuntarily separated is considered to have been involuntarily separated if the employee resigns after receiving - (1) Specific written notice that he or she will be involuntarily separated by a particular action effective on a particular date; or (2) A general written notice of reduction in force or transfer of functions which - (i) Is issued by a properly authorized agency official; (ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in Sec. 351.402 of this chapter) by a particular date (no more than 1 year after the date of the notice); and (iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severances pay purposes ***** (c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation)

Complaints letter in Appendix G

CONSTRUCTIVE DISCHARGE

The Equal Employment Opportunity Subchapter of the Civil Rights Act of 1964 and 1991 applies to a constructive discharge. A constructive discharge occurs where an employer knowingly permits discrimination creating an environment so intolerable that a reasonable person subject to it would resign. It has been held that intent is necessary but, that reasonable forcibility of the actions will cause an employee to resign constitutes intent to cause such resignation. To show constructive discharge, a plaintiff "must prove that his working conditions were so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." Wardell v School Board of Palm Beach County, 786 F.2d 1554, 1557 (11th Cir. 1986) Lynch v. Freeman, 817 F. 2d 380 (11th Cir 1987). The court of Appeals in Wardell stated that a constructive discharge is a question of fact, and permit's a finding where an employer engages in conduct that has the reasonable foreseeable effect of causing the employee to compelled to quit. {See: Huddleston v. Roger Dean Chevrolet Inc., 845 F.2d 900 (11th Circ. 1988).} As stated above, a series of the agency constitutes a retaliatory intent to cause a resignation and has made appellant's working conditions so difficult or unpleasant that a reasonable person would have been compelled to resign. The agency has knowledge of Ms. Esco's previous grievance and subsequent complaint against her by employees who have stated that she has created a hostile work environment. Mr. Moten and Ms. Taylor have put in letter form of Ms. Esco's hostile behavior toward appellant and other employees as well. Letters part of appendices.

Furthermore, the case law recognizes services of harassments and retaliations constitute a "continuing discriminatory violation theory" which is actionable. According to United Airline v. Evans, 431 U.S. 533 (1977), a continuing violation theory exists, however, that plaintiff must show a series of related acts. It is essential that the appellant demonstrate a nexus of interrelatedness, between the past and present event. The continuing violation is a common theme that clearly unites the past incident into an ongoing pattern. Reid v. Department of Commerce, EEOC Request number 05970705 (1999), McGiven v. United States Postal Service, EEOC Request number 05901150 (1990), Scott v. Clayton, 469 F. Supp. (1978), Jarmine v. Department of

Navy, EEOC number 05930019 (1993).

As stated within its petition including uncontested facts, violations specifically caused the agency through a series of harassments, investigations, created a hostile and unhealthy work environment that force the appellant to asked for a transfer and compelled appellant to consider resigning. The agency retaliated against appellant.

REASON FOR GRANTING PETITION

Points of Fact are overlooked and misapprehended by the court. These errors of fact constitute, cause and lead to errors in law or regulation that affects the outcome of this case. 5 C.F.R. sec. 1201.115(d). The petitioner should be given a chance for all of the pertinent information to be review and not bits and pieces. The petitioner has exhausted all federal avenues trying to resolve an injustice that was blatant, severe, hostile, and discriminatory.

Facts

- (1) The court failed to consider the totality of the circumstances, the proper time frame and all relevant factual allegations.
- (2) The court made findings of fact that are not supported by the record.
 - (a) the court erred in determining that management had no input into the coercion or material misrepresentation.
 - (b) the court erred in making the factual determination, contrary to Petitioner's allegations, that the resignation was November 6th rather post - November 20th.
- (3) The court made credibility calls regarding allegations. These are all errors of fact which, when corrected, will produce a different result.

Law

- (1) The Court did not consider the "totality of the circumstances" regarding the issued of involuntary resignation. The court must consider the "totality of the circumstances" matter of law. A consideration of the totality of the circumstances would produce a different result.
- (2) The court cannot make credibility determinations in determining Petitioners right to a hearing. The court's credibility determinations are cited as support for its decision. A correction of error of law will have a different result.

CONCLUSION

Petitioner reported an illegal employment practice against the agency for failure to train, failure to process a workers' compensation claim, refusal of medical documentation/medical leave, for creating hostile work, TIGTA investigation, inflicted emotional distress, conspiracy, and corruption against the petitioner. These actions are violations to 5 U.S.C. Section 2302 (b) (8) WPA and therefore, the court has jurisdiction to hear the matter.

It is derogation the process of the Civil Rights Act and court which is the enforcement body of the CRA and in derogation to the congress policy to eradicate discrimination and to vindicate the Civil Rights Act to dismiss a case based on jurisdiction when the court has the jurisdiction to hear discrimination and retaliation complaints. Clearly, it is the legislatives intent to provide equal opportunity to enjoy a full and productive life, and that the failure to provide such equal opportunity because of discrimination and retaliation, not only threatens the rights and proper privileges of its inhabitants.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Dean M. Wellino

Date: September 23, 2005

APPENDIX

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NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is public record.

United States Court of Appeals for the Federal Circuit

04-3114

DIANA M. WILLIAMS,

Petitioner

v.

DEPARTMENT OF TREASURY

Respondent,

DECIDED: January 26, 2005

Before LOURIE, SCHALL, and PROST, Circuit Judges.

SCHALL, Circuit Judge.

DECISION

Diana M. Williams petitions for review of the final decision of the Merit Systems Protection Board ("Board") that dismissed for lack of jurisdiction (i) her appeal of her alleged involuntary resignation from her position with the Department of the Treasury ("agency"), and (ii) her claims under the Whistleblower Protection Act of 1989 ("WPA"), Pub. L. No. 101-12, 103 Stat 16 (1989) (codified at 5 U.S.C. § 2302(b)(8)). Williams v. Dep't of the Treasury, No. DA-1221-02-0555-W-1 (M.S.P.B. Oct 23, 2003). We affirm.

DISCUSSION

I.

Effective June 4, 2001, Ms. Williams received a career-conditional appointment to the position of Secretary (Office Automation), GS-0318-05, with the Internal Revenue Service. The appointment was subject to a one-year probationary period. By letter dated November, the agency informed Ms. Williams that she was being terminated during her probationary period, effective November 21, 2001. The letter informed that she had the right to appeal her termination to the Board if she believed that it was based on partisan political reasons or on her marital status. On November 20, 2001, Ms. Williams submitted her resignation, effective that day. In her letter of resignation, Ms. Williams stated that she was resigning for health reasons. However, in 2002, Ms. Williams filed an appeal with the Board. In an Acknowledgement Order dated July, 2002 the administrative judge ("AJ") to whom the appeal was assigned informed Ms. Williams that the Board might not have jurisdiction over her appeal. The Order explained that a resignation is presumed to be voluntary action and this not appealable to the Board. The Order also explained the limited appeal rights that are available to an

employee who is terminated during his or her probationary period. In addition, Ms. Williams was told that she had the burden of establishing the Board's jurisdiction, as well as what she would have to prove in order to establish jurisdiction. On August 19, 2002, the AJ issued a Second Order Regarding Jurisdiction. In that Order, the AJ again informed Ms. Williams of what she was required to do in order to establish Board jurisdiction over her appeal. After considering the documentary record, the AJ issued an initial decision on October 31, 2002 in which she concluded that Ms. Williams had not established that her resignation was involuntary. Williams v. Dep't of Treasury, No. DA-1221-02-0555-W-1 (M.S.P.B. Oct. 31, 2002) ("Initial Decision"). The AJ also stated that, assuming arguendo the Ms. Williams had established that her resignation was involuntary, she still had not alleged any facts suggesting that the decision to terminate her employment during her probationary period was based on partisan political reasons or her marital status, the only two grounds upon which a probationary employee may appeal a removal action based upon events occurring during the probationary period. See 5 C.F.R. § 1201.3(a)(8). Finally, the AJ rejected the WPA claims that Ms. Williams had asserted in her appeal. The AJ therefore dismissed the

appeal for lack of jurisdiction.

The AJ's initial decision became the final decision of the Board on October 23, 2003 after the Board denied Ms. Williams' petition for review for failure to meet the criteria for review set forth at C.F.R. § 1201.115(d). This appeal followed. We have jurisdiction to pursuant to 28 U.S.C. § 1295(a)(9).

II

Our scope of review in appeal from a decision of the Board is limited. Specially, we must affirm the Board's decision unless we find it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule or regulation having been followed; or unsupported by substantial evidence. 5 U.S.C. § 7703 (c); see Kewley v. Dep't of Health & Human Servs. 153 F.3d 1357, 1361 (Fed. Cir. 1998).

A resignation is presumed to be voluntary and is beyond the Board's jurisdiction. See Braun v. Dep't of Veterans Affairs, 50 F.3d 1005, 1007 (Fed. Cir. 1995).

However, an involuntary resignation is tantamount to a removal, an adverse action vesting the Board with jurisdiction pursuant to 5 U.S.C. § 7512. See

Staats v. United States Postal Serv., 99 F.3d 1120, 1123 (Fed. Cir. 1996). In order to overcome the presumption of voluntaries and demonstrated that a resignation was involuntary, an appellant must show either (1) that the resignation was the product of misinformation or deception by the agency, id. At 1124 (citing Covington v. Dep't of Health & Human Servs., 750 F.2d 937, 942 (Fed. Cir. 1984)), or (2) that the resignation was the product of coercion by the agency, id (citing Dumas v. Merit Sys. Prot. Bd., 789 F.2d 892, 8894 (Fed. Cir. 1986)). The test for involuntariness is an objective one; it is not measured by the appellant's subjective evaluation of his or her situation.

Middleton v. Dep't of Defense, 185 F.3d 1374, 1379 (Fed. Cir. 1999). Involuntariness may be established by showing that an appellant's working conditions were made so intolerable that a reasonable person in the appellant's position would have felt compelled to resign. Id.

Before the Board, the basis for Ms. Williams' contention that her resignation was involuntary was her claim that her working conditions had been made intolerable by the conduct of her immediate supervisor towards her. The AJ rejected this claim, however, finding the Ms. Williams' complaints about the supervisor were not credible "in light of the

contradictions evident in her own submissions." Initial Decision, at 7. The AJ further determined:

The decision to terminate the appellant's employment during her probationary period had been. She submitted her resignation only after she was faced with two unpleasant alternatives, either resign or be terminated. See Sullivan v Department of Veterans Affairs, 79 M.S.P.R. 81. 85 (1998) (that the appellant was faced with unpleasant choices does not establish that her resignation was involuntary). She acknowledged that she was advised the union president, not a management official, that it would be in her best interest to resign. It was the appellant's choice to resign than accept the termination decision. Based on my review of the record, I find that her decision to resign was voluntary.

Id. at 8

Open appeal, Ms. Williams argues that she was entitled to a hearing because she made non-frivolous allegations of involuntariness. Addition, she notes that the AJ did not consider her appeal under the non-frivolous standard but, rather, decided the appeal based upon a credibility determination. This, she contends was error. Ms. Williams is correct that if

an appellant makes a non-frivolous allegation that a resignation was involuntary, he or she has the right to a hearing on the issue of involuntariness. Dick v. Dep't of Veterans Affairs, 290 F. 3d 1356, 1362 (Fed. Cir. 2002). Ms. Williams also is correct that the AJ did not articulate the non-frivolous standard. We see no reason, however, to disturb the decision of the Board on that ground. The AJ correctly considered Ms. Williams' appeal based upon the administrative record, see Spencer v. Dep't of Navy 327 F.3d 1354, 1356 (Fed. Cir. 2003), and we read the AJ's decision as effectively concluding that Ms. Williams failed to make a non-frivolous allegation of involuntariness, a conclusion supported by the record.

Finally, assuming arguendo that Ms. Williams had made a non-frivolous allegation of involuntariness, the result of the appeal would have been no different. As the AJ pointed out, because Ms. Williams was separated during her probationary period, she could only invoke the jurisdiction of the Board if she alleged that she was terminated for partisan political purposes or by reason of discrimination based upon her marital status. See 5 C.F.R. § 1201.3 (a) (8). Ms. Williams alleged neither.

III

We now turn to Ms. Williams' WPA claims. Shortly before the receipt of the notice of proposed removal, Ms. Williams filed a complaint with the Office of Special Counsel ("OSC"). Ms. Williams alleged that her supervisor took retaliatory personnel actions, in violation of the WPA, in response to a protected disclosure. Specifically, Ms. Williams alleged that she made two protected disclosures. First, Ms. Williams asserted that supervisor, Ms. Esco, had me investigated for falsifying tax documents." Second, Ms. Williams alleged, as a protected disclosure, the following:

Sandralyne W. Esco information concerning the refusal of my medical release. A meeting took place with Joseph Stack territory manager and all the managers concerning my employment status.

After OSC failed to take, action, Ms. Williams filed an Individual Rights of Action ("IRA") with the Board. It appears the IRA was considered by the AJ as part of Ms. Williams whistle blowing claim, the AJ stated:

{A} review of the appellant's complaint to OSC reveals that she did not engage in protected whistle blowing activities.

Initial Decision, at 9.

On appeal, Ms. Williams challenges that Board's decision with respect to

her whistle blowing claim. We read the AJ's decision as stating that Ms. Williams failed to make a non-frivolous allegations that she made a protected disclosure. The Board has jurisdiction over an IRA appeal if the appellant has exhausted his or her administrative remedies before OSC and makes "no frivolous" allegations that (1) he or she engaged in whistle blowing activity by making a protected disclosure under 5 U.S.C. § 2302 (b) (8), and (2) the disclosure was a contributing factor in the agency's decision to take or fail to take a personnel as defined by 5 U.S.C. §2302 (a). Yunus v. Dep't of Veterans Affairs, 242 F.33d 1367 (Fed. Circ. 2001). Whether allegations are non-frivolous is determined on the basis of the written record. Spencer v. Dep't of the Navy, 327 F.3d1354, 1356 (Fed. Circ. 2003).

We see no error in the Board's dismissal of Ms. Williams' whistle blowing, claim, on the ground that Ms. Williams failed to make protected disclosures revealing "a violation of [] law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety," 5 U.S.C. § 2302 (b) (8).

With respect to Ms. Williams' first alleged protected disclosure Ms. Williams claimed that Sandralyne W. Esco had me investigated for falsifying tax documents." In her supporting affidavit to the Board, Ms. Williams

explained:

Affiant states that on September 28, 2001, the Inspector {McFarland} informed appellant that Ms. Esco reported appellant for filing a false income tax return stating that appellant lied about appellant's martial status.

Thus, Ms. Williams' first alleged "disclosures" was that an investigator told her that an investigation had begun, and that this investigation was at the behest of Ms. Esco. Even if true, we do not see how the fact that Ms. Williams was informed of unfavorable information amounted to a protected disclosure by Ms. Williams under the WPA.¹

¹ Ms. Williams' IRA form might be read as stating that Ms. Williams disclosed information to Mr. McFarland, rather than vice versa. However, the affidavit makes clear that Ms. Williams' WPA claim is based on what she claims Mr. McFarland told her. It would not make sense for Ms. Williams to "disclose" to the tax investigator that she was being investigated for falsifying tax returns.

Ms. Williams' second "protected disclosure" appears to be that Ms. Williams told Ms. Esco she was unhappy about Ms. Esco's decision regarding her medical leave. As noted above, the alleged disclosure was that a meeting took place among managers regarding Ms. Williams' employment status. None of this indicated that Ms. Williams made a protected disclosure under the WPA.

For the foregoing reasons the final decision of the Board is affirmed.

Each party shall bear its own costs.

FOR THE COURT

January 26, 2005

Date

S/Jan Horbaly
Jan Horbaly
Clerk

United States Court of Appeals for the Federal Circuit

04-3114

DIANA M. WILLIAMS,

Plaintiff-Appellant,

v.

DEPARTMENT OF TREASURY

Defendant-Appellee.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

ORDER DENIED

FOR THE COURT

May 27, 2005

S/Jan Horbaly

Jan Horbaly

Clerk

04-3114

1

Appendix B

Prohibited Personnel Practices

(a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b)

(2) For the purposes of this section -

(A) "personnel action" means -

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;
- (ix) a decision concerning pay, benefits, or awards concerning education or training if the education or may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
- (x) a decision to order psychiatric testing or examination and
- (xi) any other significant change in duties, responsibilities, or working conditions, with respect to an employee in, or applicant for, a covered position if the agency, and in the case of an alleged prohibited personnel practice described in subsection (b) (8), an employee or applicant for employment in a Government corporation as in section 9101 of title 31;

(B) "covered position" means, with respect to any action, any position in the competitive, a career appointee position in the Senior Executive Service, or in the excepted service, but does not include any position is, prior to the personnel action -

- (i) expected from the competitive service because confidential, policy-determining, policy-making, or policy-

APPENDIX C

advocating character; or

(ii) excluded from the coverage of this section by President based on a determination by the President necessary and warranted by conditions of good administration and

(C) "agency" means an Executive agency and the Government Printing Office, but does not include –

(i) a Government corporation, except in the case of alleged prohibited personnel practice described under subsection (b) (8);

(ii) the General Accounting Office.

(b) Any employee who has authority to take, direct others take, recommend, or approve any personnel action, shall respect to such authority –

(1) discriminate for or against any employee or applicant employment –

(A) on the basis of race, color, religion, sex, or origin, as prohibited under section 717 of the Civil of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under section 25 of the Age discrimination in Employment of 1938 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section of the Fair Labor Standard Act of 1938 (29 U.S.C. 206 (d),

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 29 U.S.C. 791);

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation; (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who request or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of – (A) an evaluation

of the work performance, ability, aptitude, of general qualifications of such individual; or (B) an evaluation of the character loyalty, or suitability of such individual; (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity; (4) deceive or willfully obstruct any person with respect rule, or regulation, or (ii) gross management, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of - (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A); (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or (D) for refusing to obey any order that would require the individual to violate a law; (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of

Columbia, or of the United States; (11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or (B) knowingly fail to take, recommend, or approve an personnel action if the failure to take such a action would violate a veterans' preference requirement; or (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information form the Congress or the taking of any personnel action against an employee who discloses information to the Congress. (C) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation. (D) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under

- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis or race, color, religion, sex, or national origin;
- (2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
- (3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;
- (4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) prohibiting discrimination on the basis of handicapping

condition; or

(5) the provisions of any law, rule, regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term "veterans" preference requirement" means any of the following provisions of law:

- (A) Sections 2108, 3305(b), 3309 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3363, 3501, 3502(b), 3504 and 4303(e) and (with respect to a preference eligible referred to in section 7511(a) (1) (B)) subchapter II of chapter 75 and section 7701.
- (B) Sections 943(c)(2) and 1784(c) of title 10.
- (C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
- (D) Section 301(c) of the Foreign Service Act of 1980.
- (E) Sections 106(f), (Footnote 1) 7281 (e), and 7802 (5) of title 38.
(FOOTNOTE 1) See References in Text note below.
- (F) Section 1005(a) of title 39.
- (G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposed of this subsection.
- (H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
NEW ORLEANS, LA 70130

AUGUST 10, 2001

MEMORANDUM FOR Diana M. Williams, Secretary Group 3

FROM: Sandralyne W. Esco
Manager Group 3

SUBJECT: Working After Hours

This memo is written notification to you because you to continue to work after your tour of duty ends without managerial approval.

We have had several discussions regarding this subject. During each of these discussions, I have emphasized that you are not to work after your tour of duty ends with first seeking my approval. However, you continue to remain at work after your tour of duty ends. You stated that you were working on your secretarial tasks. I have tried to impress upon you that you should first seek managerial approval before working after your tour of duty ends.

This memo also serves as written notice of our previous discussions regarding this subject and the fact that you continue to work after your tour of duty ends without managerial authorization.

SECRETARY _____ **DATE** _____

MANAGER **DATE**

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE
NEW ORLEANS, LA 70130**

September 30, 2001

MEMORANDUM FOR Diana M. Williams, Secretary Group 3

FROM: Sandralyne W. Esco

SUBJECT: Working Outside of Your Tour of Duty

This memo is written notification to you because you continue to work outside of your normal tour of duty. Specifically, you have been coming in before your tour of duty begins and working without prior managerial approval.

We had several discussions regarding this subject and you were given a memo (dated August 10, 2001 regarding working after your tour of duty ends) on this subject. During each of these discussions, I have emphasized that you are not to work outside of your tour of duty without first seeing my approval.

I have tried to impress upon you that you should first seek managerial approval before working outside of your tour of duty because these are laws and/or regulations that govern your work hours and schedule.

This memo also serves as written notice of our previous discussions regarding this subject and the fact that you continue to work outside of your normal tour of duty without managerial authorization.

SECRETARY **DATE**

MANAGER _____ **DATE** _____

APPLICATION FOR PROMOTION/RESIGNMENT

Name (Last, First, Middle)	Social Security	Vacancy Number	Closing Date
Williams, Diana, Marie	XXX-XX-XX33	SBB02LA06	10/16/01
Title, Series Grade	Office Phone Title	Series and Grade	
Secretary	X3280	Secretary	0318-GS-05

Employing Office, Address, and Symbols

Location

600 S. Masetri Place
New Orleans
New Orleans, LA 70130

Supervisor's Name S. Esco	Office Phone x3207	Desires Division and Branch Estate & Gift Terre
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MANAGEMENT CAREERS APPLICANTS DO NOT COMPLETE BLOCKS 6 AND 7

Incentive Awards Received and Date (Additional space on reserve side if needed)

Employee Signature Date 10/12/01

Supervisor's initials _____ **Date** _____

APPLICATION FOR PROMOTION/RESASSIGNMENT

Name (Last, First, Middle)	Social Security	Vacancy Number	Closing Date
Williams, Diana, Marie	XXX-XX-XX33	RPB01LA18	10/16/01
Title, Series Grade	Office Phone	Title	Series and Grade
Secretary	X3280		Secretary 0318-GS-05

Employing Office, Address, and Symbols

Location

600 S. Maseri Place
New Orleans
New Orleans, LA 70130

Supervisor's Name	Office Phone	Desires Division and Branch
S. Esco	x3207	Estate & Gift Terre.

MANAGEMENT CAREERS APPLICANTS DO NOT COMPLETE BLOCKS 6 AND 7

Incentive Awards Received and Date (Additional space on reserve side if needed)

Employee Signature Date 10/12/01

Supervisor's initials Date

Grievance #1

National Treasury Employees Union
Memorandum

Date: October 11, 2001

To: Kay Banks, Labor Relations Specialist

From: Roland Gordon, President NTEU Chapter 6

Subject: Grievance – Diana Williams

Grievant's Immediate Manager: Sandralyne Esco

Specific article, law, rule, regulation violated:

Article 5, Section 7 and 9 and any other article, law or regulation violated

State of Violations:

Manager has created a hostile work environment for the employee that is unprofessional and discourteous.

Remedy Requested:

Reassign employee to another group.

Grievance #2

**National Treasury Employees Union
Memorandum**

Date: November 2, 2001

To: Kay Banks, Labor Relations Specialist

From: Roland Gordon, President NTEU Chapter 6

Subject: Grievance – Diana Williams

Grievant's Immediate Manager: Sandralyne Esco

Specific article, law, rule, regulation violated:

Article 5, Section 7 and 9 and any other article, law rule violated

Statement of Violations

Manager retaliated against employee.

Remedy Requested:

Reassign employee to another group.

Memorandum from Secretary of Treasury

From: Secretary O'Neill
Sent: Thursday, October 25, 2001 12:04 PM
Subject: Resolving Workplace Disputes

October 22, 2001

MEMORANDUM FOR ALL TREASURY EMPLOYEES

FROM: Paul H. O'Neill
SUBJECT: Resolving Workplace Disputes

As Secretary of the Treasury, I am committed to a workplace where all employees are treated with dignity and respect. Our workplace should reflect an environment where we are honest and responsible in our dealings with one another. However, I am aware that in every workplace, disputes do occur. And when they do I am equally committed to resolving these disputes as early as possible, in an appropriate and cost effective manner, and at the lowest organizational level possible. Resolving complaints expeditiously contributes significantly to our goal or maintaining an environment that fosters communication and involvement.

Many dispute that arise in the workplace are the result of a lack of communication understanding and respect. Our statistics show that many Equal Employment Opportunity complaints involve issued of reprisal and/or harassment. Historically, these complaints result in days lost to stress and illness as well as time dedicated to the preparation and processing of cases.

I am proponent of alternate dispute resolution (ADR) programs and am pleased that ADR programs are successfully operating throughout the Department. ADR techniques, particularly mediation, assist parties in finding creative, mutually acceptable and early resolution of disputes. Managers and employees working together to solve problems leads to improve long-term relationships and better work products. In addition, I

believe that these techniques can be used as a management tool to prevent conflict from escalating into more serious disputes. ADR promotes principled and practices of trust that facilitate communication and healthy working relationships.

By working together to resolve workplace disputes, we will continue to build a world class organization. I know I can count on each of you in this effort.

Please note: Replies to this message will be received by the Communication Division and forward as appropriate

Witness Letter #1 Mother's Letter

Mrs. Rosa Lee Williams
2921 Cherry Street
New Orleans, LA 70118

To: Counselor at Law:

I Mrs. Rosa Lee Williams witnessed the constant telephones calls made to my daughter by union representative Marjorie Wheeler, union president Roland Gordon, and IRS manager Joseph Stack on November 19 & 20, 2001. My daughter was physically and mentally unable to address such harassing telephone calls she received after being home from her surgery. I personally witnessed my daughter arguing with Mr. Stack Tuesday morning November 19, 2001. I entered the room asking her, "Diana who is that you are talking to?" The conversation continue for an additional fifteen minutes then it ended. When my daughter hanged the phone up she told me it was Joe Stack, Sandralyne's supervisor. I ask how did he get this number when it is private?" The telephone ranged a third time, it was Marjorie Wheeler calling to ask what my daughter was going to do about the resignation letter. The telephone ranged a fourth time on this date and it was Joe Stack giving my daughter a final demand about resigning from her job. This made me furious because my child was lying on her back from a severed operation and taking medication and every time the phone rung, it was someone one from the IRS.

Diana told me the union president, union representative, and Joe Stack wanted a resignation letter in his office no later than 5:00 p.m. My child was very sick and frustrated and these people told her what to write and say in the letter. The union president called back to make sure my daughter was going to comply with Joe Stack demands. I told my daughter, "These people have no compassion for you, they did not send you a get well card, your supervisor told you that you were pretending to be sick, Jose Stack states you do not have any degrees that you lied, what kind of people are you dealing with, if they call this house again I am going to tell them do not call my house ever again!" Later the doorbell rang, I Mrs. Williams went to the door because Marjorie Wheeler informed me that she was on her way to get Diana's letter of

resignation. I have never in my life witnessed such hatred and deception by a group of people who deliberately harassed my child after she came home from the hospital, they just didn't give a care, they didn't want her working there anymore and they wanted her out of the building in the worse way. I believed my daughter's life was in danger because it is definitely that her supervisors inflicted mental pain to her and put her health in danger.

Thank You

Mrs. Rosa Lee Williams

Witness Letter #2

Date: October 22, 2001

Willie A. Moten, Jr.
7680 Morel Street
New Orleans, LA 70128

Kenneth Plaissance Attorney at Law
2067 N. Miro Street
New Orleans, LA 70128

Dear Sir:

Diana M. Williams asked me if I would write a letter to you on her behalf testifying to the fact of my experience while under the supervision of Ms. Sandralyne Esco. I worked under Ms. Esco as a revenue agent from January of 1997 to January 2001. While under her supervision I was subjected to a hostile work environment, and several unfair, and discriminatory annual appraisals. While working under Ms. Esco I was under a considerable amount of stress. I am a war veteran of the Vietnam era, and I am currently being treated at the local VA Medical Center for service connected disabilities. Ms. Esco greatly aggravated my illness, and cause it to escalate to higher levels. While under Ms. Esco I filed two EEO complaints and two union grievances I was subjected to an investigation conducted by the Regional Inspection Division, because of the false allegations made against me by Ms. Esco. The union grievances and the EEO complaints were settle in a manner in which both parties were satisfied, and the investigation was discontinued and I was given a clearance after the allegations were determined to be false. Ms. Esco has a track record for abusing the employees that are assigned to her group, especially men subordinate to her, and group secretaries. During the four years that I was worked under Ms. Esco she abused all of the group secretaries that were assigned to her. She abused them verbally, and created a hostile work environment for them. Because of Ms. Esco's hostile attitude she was

without her own secretary for a long time before Diana was assigned to work for her. I never formerly met Diana Williams, but I've talked with her over the telephone. When I left Ms. Esco's group in January 2001, I had heard that Ms. Esco had a new group secretary that she was abusing. This news was all over the office. Diana Williams was being harassed for coming to work early and leaving work late. You were think that a supervisor would be please with an employee that was coming to work early and leaving work late, but not Ms. Esco.

If you have any more questions concerning this matter I will be more than happy to assist you.

Sincerely,

Willie A. Moten, Jr.

Witness Letter #3

To: Ms. Diana M. Williams

From: Ms. Sylvia Taylor

Date: October 22, 2003

MEMO FOR RECORD:

This is strictly my opinion and what I observed while Ms. Williams, worked across from me at the Internal Revenue Service from June 2001 to November 2001.

Ms. Williams was never formerly trained by anyone in the office, I was offered training but Ms. Williams was not given the same opportunity and we both started on the same date of our jobs. The individual sitting in the position now was trained for a month or more, by another Secretary.

I observed on several occasions, the Manager for the Group Ms. Williams worked, spoke to her in a negative manner, on some occasions, the Manager for the Group Ms. Williams worked, spoke to her in a negative manner, on some occasions yelled and talked down to her. I feel to believe that she worked in a hostile environment.

Sincerely,

Sylvia Taylor

558-3299 Work Phone

242-7925 Home

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

November 6, 2001

Diana Williams
2921 Cherry Street
New Orleans, LA 70118

**Notice of Probationary Separation: THIS COPY MAY AT YOUR OPTION
BE FURNISHED TO NTEU CHAPTER 06.**

Dear Ms. Williams:

This a notice of my decision to terminate your employment with the Internal Revenue Service, effective November 21, 2001, in accordance with Part 315.804 of the Office of Personnel Management regulations. This termination during your probationary period is based on the following reason:

Since your employment with the Internal Revenue Service, you have been issued several memorandums regarding your failure to follow instructions given by your supervisor. On August 10, 2001, you were given a memo, which confirmed numerous conversation regarding you continuing to work outside your tour of duty without receiving prior managerial approval. After the issuance of the August 10, 2001 memo you continued to work outside your tour of duty without receiving prior managerial approval and a follow-up memo was issued to you on September 22, 2001. In addition, October 1, 2001, you were given a Statue Pending List and your supervisor directed you to locate the returns. On October 4, 2001, your supervisor asked you about the Statue Pending List and you stated that you had to look for the list. When you eventually located the list, your supervisor discussed statue dates and its priority statues when prioritizing your work. You were issued a memo dated October 4, 2001, confirming this conversation. You did not locate the returns until October 4, 2001, and this task was completed only after your supervisor

again instructed you do. On October 12, 2001, you were again issued a memo in which your manager had to repeat instructions given in regard to overall work-flow processes.

Diana, it is imperative that employees readily respond to the directions of their supervisor and that you adhere to directions/instructions given. You have entered into a pattern in which you do not respond readily to direction/instructions given and your supervisor has had to repeat directions/instructions prior to you completing assignment and so forth. Management regrets taking this course of action, however, we need employees who respond readily to managerial instructions/directions. Your failure to follow directions/instructions has resulted in a violation of the Interim Handbook of Employee conduct of Ethical Behavior document, 9335, Section 215.2, which states, "Employees are expected to conscientiously perform their duties to the Government and the public, respond readily to the direction of their supervisor, and conduct their relations with fellow employees in a manner which does not cause dissension or discord."

You have the right to appeal this action to the Merit System Protection Board, Dallas Regional Office, 1100 Commerce Street Room 6F20, Dallas, Texas 45240-9979, under Part 315 of the Office of Personnel Management regulations. However, you may only appeal to the Board if you allege that this action was based in whole, or in part on your marital status or political affiliation.

A copy of the Merit Systems Protection Board regulations is enclosed with this letter. Section 1201.24(a) of the regulations tells you what information must be included in your written appeal to the Board. You may used the appeal included as Appendix 1 to the regulations, although it is not required that you file your appeal using the form. However, since completion of would constitute compliance with the requirements of Section 1201.24(a), you are encourage to use the form. To be timely, and to the Board must be filed anytime during the period beginning with the after effective date of this action and ending thirty (30) calendar days after that date. Filing can be by personal delivery during normal business hours to the board field office indicated above, in which case the date of mailing is the date of filing.

Should you allege that the action taken against you was based I whole or in part on discrimination because of race, color, religion, sex, age, national origin, or physical or mental handicap, you may appeal the discrimination allegation through the Service's discrimination complaint system under Part 1613 of the Equal Employment Opportunity Commission regulations. To appeal under Part 1613, the allegation must be brought to the attention of an EEO counselor within thirty (30) calendar days of the effective date of this action.

You may not appeal an allegation of discrimination because of race, color, sex, age, national origin, or physical or mental handicap to the Merit Systems Protection Board unless you also allege that the action was based in whole or in part on your marital status or political affiliation. In that event, you may appeal all allegations of discrimination to the Merit Systems Protection Board.

Information about appeal rights and procedures may be obtained from Labor Relations and/or your Equal Employment Opportunity Counselor.

A Standard Form 50 effecting your termination will be forwarded to you when available.

Sincerely,

Joseph Stack
Territory Manager
SB/SE Compliance Area 8

U.S. OFFICE OF SPECIAL COUNSEL
(202) 653-7188 (800) 872-9855
Form OSC-11 (12/00)

OMB Control No. 3255-0002

**COMPLAINT OF POSSIBLE PROHIBITED PERSONNEL
PRACTICE OR OTHER PROHIBITED ACTIVITY**

**PART I PROHIBITED PERSONNEL PRACTICES/OTHER PROHIBITED ACTIVITY
(GENERAL)**

1. Name of person seeking OSC action ("Complaint"); Mr. () Mr. (X) Mrs. () Miss ()

Diana M. Williams

2. Position, title, series, and grade: Secretary GS-0318-5

3. Agency name: Internal Revenue Service

4. Agency address: 600 S. Maestri Place
New Orleans, LA 70130

5. Home or mailing address: 2921 Cherry Street
New Orleans, LA 70118

6. Contact Information: Telephone number (s):
(504) 482-1313 (Home)
(504) 430-0606 (Office)

7. If you are filing this complaint as a legal or other representative of the Complaint,
please Supply the following information:

Address : _____

8. Are you (or is the complaint, if you are filing as a representative) covered by a
collective Bargaining agreement? (Check One)
(X) Yes () No () I don't know

9. How did you first become aware that you could file a complaint with OSC?"
APPENDIX D

() OSC Web site () speaker () OSC () brochure
() OSC poster () news story (X) agency personnel
() Union () Co-worker () other (please describe)

Date (approximate): October, 2001

12. What official is responsible for the violation(s) that you are reporting, and what is his/her employment status? (If more than one official, continue on page 12. See item 10 for appropriate description of employment status.)

Name: Sandralyne W. Esco
Position/TITLE: Manager GS-13
Employment Status: Permanent

13. What are the actions or events that you are reporting to OSC? (to the extent known, specifically list: (a) any suspected prohibited personnel practices or other prohibited activity, other than reprisal for whistleblowing; and (b) any personnel actions involved.

IF YOU ARE ALLEGING REPRISAL FOR WHISTLEBLOWING, SKIP TO PART 2 OF THIS FORM ON THE NEXT PAGE. PART 2 REQUEST DETAILS OF WHISTLEBLOWER REPRISAL ALLEGATIONS.) This manager made false allegations against me concerning my federal income taxes. This person refuse and did not accept a medical document from my physician concerning major surgery and she refused to signed a release form approving the necessary time to take a medical leave of absence due to the immediate surgery. Enclose is a coy of the leave request and a letter written to me after the union president filed my grievance. I have also enclosed other documents which was used as disciplinary tactics. Rumors are now circling that Sandralyne Esco and Joseph Stack are terminating me from my job while I am out on sick leave/leave without pay.

14. What facts support the statement(s) made in Question 13? (Be as specific as possible about the dates, locations, and the identities and position of all person mentioned. In particular, identify actual and potential witness, giving work locations and telephone numbers when possible. Also attach any pertinent documents that you may have. Please provide, if possible, a copy of the notification of the agency's proposal and/or decision about the personnel action(s) covered by your request for OSC action. If more space is needed, continue on page 12.
The dates are on the letters of disciplinary tactics that were used my manager Sandralyne W. Esco. I was constantly reprimanded when I meet with a union representative. Marjorie Wheeler had first hand knowledge of the letter dated

October 12, 2001 but issued on October 17. The initial grievance letter was filed on October 11, 2001, by the union president Roland Gordon. Ms. Esco has continue to over abuse her authority against me and the enclose letters are proof of her actions.

15. What action would you like OSC to take in this matter (I.e., what remedy are you asking for?)

I would like to be compensated by being placed in another manager's department that is less hostile and unpleasant. My job is very important to me.

MUST BE COMPLETED FOR ALL DISCLOSURES INCLUDED IN THIS COMPLAINT

2.

<p>A. WHAT INFORMATION WAS DISCLOSED (DESCRIBE WHISTLEBLOWER DISCLOSURE).</p> <p>Sandralyne W. Esco has me investigated for falsifying tax documents by TIGTA.</p>	<p>WHEN WAS THE DISCLOSURE MADE? (MO/DA/YR)</p> <p>September 28, 2001</p> <p>TO WHOM (NAME AND TITLE) WAS THE DISCLOSURE MADE?</p> <p>Jim McFarland, Inspector</p>
<p>B. WHAT INFORMATION WAS DISCLOSED? (DESCRIBE NEXT WHISTLEBLOWER DISCLOSURE).</p> <p>Sandralyne W. Esco was given information concerning a medical release. A meeting took place with Joseph Stack, Manager and all the managers concerning my employment.</p>	<p>WHAT PERSONNEL ACTION(S) OCCURRED (OR WAS/WERE THREATNED) BECAUSE OF THE DISCLOSURE? (LIST PERSONNEL ACTION NUMBERS FROM PP. 4-5</p> <p>Immediate Termination</p> <p>WHEN WAS THE DISCLOSURE MADE? (MO/DA/YR)</p> <p>October 25, 2001</p> <p>TO WHOM (NAME AND TITLE) WAS THE DISCLOSURE MADE?</p> <p>Sandralyne W. Esco</p> <p>WHAT PERSONNEL ACTION(S) OCCURRED (OR WAS/WERE THREATENED) BECAUSE OF THE DISCLOSURE? (LIST PERSONNEL ACTION NUMBERS FROM PP 4-5</p>

Termination immediately..	Conspiracy to have terminated for filing grievances, and trying to file an EEOC charge against Ms. Esco.
	WHEN DID PERSONNEL ACTION(S) OR THREAT(S) OCCUR? (MO/DA/YR)
C. WHAT INFORMATION WAS DISCLOSED? (DESCRIBE NEXT WHISTLEBLOWER DESCRIBE)	WHEN WAS THE DISCLOSURE MADE? (MO/DA/YR)
	WHAT PERSONNEL ACTION(S) OCCURRED (OR WAS/WERE THREATNED BECAUSE OF THE DISCLOSURE? (List personnel action numbers form pp. 4-5) WHEN DID PERSONNEL ACTION(S) OR THREAT(S) OCCUR? (MO/DA/YR)

KEEP A COPY OF THIS PAGE FOR YOUR RECORDS

MUST BE COMPLETED FOR ALL DISCLOSURE INCLUDED IN THIS COMPLAINT

3. If you are not the person who actually made a disclosure listed above, please identify the disclosure involved, and provide the name, address, and telephone number of the person who made the disclosure, if known. (Use Continuation Sheet on page 12 if room is needed for identification of more than one person.)

Disclosure: 2a () 2B () 2C () 2D () 2E () 2F ()

Name: Sandralyne W. Esco and Joseph Stack
Address: 600 S. Macarri Place
New Orleans, LA 70130

Telephone number: (504) 558-3207
558-3304

4. Explain why you believe that the personnel action(s) listed above occurred because of the disclosure(s) that you described. (Be as specific as possible about any dates, locations, names, and positions of all persons mentioned in your explanation. In particular, identify actual and potential witnesses, giving work locations and telephone number, if known. Attach a copy any documents that support your statements. Please provide, if possible, a copy of the notification of the agency's proposal and/or decision about the personnel action(s) covered by your complaint. If more space needed, continue on page 12.)

5. Enclosed are documents to prove the disciplinary tactics used by Sandralyne Esco. A meeting was called on September 13, 2001 at 1:00 pm with Sandralyne Esco, Joseph Stack (her manager) Roland Gordon (Union president), and myself. It was said by Joe Stack that another manager requested to have me moved into his department. Joe Stack refused to let me move to another manager area. I had no knowledge of this matter until September 13, 2001, and Mr. Stack accused me of soliciting another manager for assistance. Sandralyne has had numerous grievances against her including a pending investigation by Willie Moten. Sandralyne has continuously to discriminate all secretaries under her management. Barbara Henson, Kim Polite, Cassandra Green have all left her department due to a hostile and Stressful working environment in which Ms. Esco brags about to others IRS managers. Cassandra Doss left as a Tax Compliance Officer due to the harassing, hostile conditions and training tactics she received in a short period time, she went back to Veterans Hospital.

6. What action would you like OSC to take in this matter (i.e., what remedy are you asking for)?

I would like to be place in another department without any interference from Sandralyne W. Esco and Joseph Stack. These two individuals has place mental and mental emotional stress on me intentionally during my employment and before my surrey.

KEEP A COPY OF THIS PAGE FOR YOUR RECORDS

PART 3 CONSENT TO CERTAIN DISCLOSURES OF INFORMATION

OSC asks everyone who files a complaint alleging a possible personnel practice or other Prohibited activity to select one of three consent Statements shown below. If we do not receive a signed consent Statement, we will assume that you have agreed to Consent to Statement 1.

Please return the original signed Consent Statement to OSC. Also, please keep a copy of the signed Consent Statement and all documents that you send to OSC for your own records.

If you initially choose a Consent Statement that contains restrictions on OSC's use of information, you many later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, and OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act allows the information contained in OSC's files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. Information about the circumstances under which OSC can use or disclose information pursuant to the Privacy Act appears on the next page.

(Please sign one)

Consent Statement 1

I consent to communications between OSC and the involved agency as deemed necessary by OSC. I agree to allow OSC to disclose my identity as the complainant to the agency involved and information from or about me if OSC decides this is necessary to elicit information from the agency involved, take further action, or obtain corrective or disciplinary action. I understand that regardless of the Consent Statement I choose, OSC may disclose information as allowed by the Privacy Act.

Complaint's Signature
For consent Statement

Date signed

Consent Statement 2

I consent to communications between OSC and the involved agency as deemed necessary by OSC, but I do not agree to allow OSC to disclose my identity as the complainant to the agency involved. I agree to allow OSC to disclose only that information from or about me, without disclosing my name or other individual identifying information, if OSC decides it is necessary to elicit information from the agency involved, take further action, or obtain corrective or disciplinary action. I understand that in some

circumstances (for example, if I am complaining about my nonpromotion), it would not be possible for OSC to maintain my anonymity while communicating with the agency involved about a specific personnel action. In such circumstances, I understand that my request for anonymity may preclude OSC from taking further action on my complaint. I understand that regardless of the consent Statement I choose, OSC may disclose information as allowed by the Privacy Act.

Complainant's Signature
For consent Statement

Date signed

Consent Statement 3

I do not consent to communication between OSC and the agency involved even if OSC decided it is necessary to elicit information from the agency, take further action, or obtain corrective or disciplinary action. I understand that if OSC decides that is not possible to take further action on my complaint without obtaining additional information form the agency involved, may lack of consent will preclude OSC from taking further acting on my complaint. I understand that regardless of the Consent Statement I choose. OSC may disclose information as allowed by the Privacy Act.

Complainant's Signature
For consent Statement

Date signed

PART 4: CERTIFICATION AND SIGNATURE

I certify that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine of up to \$10,000, imprisonment for up to five years, or both 18 U.S.C. § 1001.

Signature

Date signed

To: U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505
Fax: 202-653-5151

FROM: Diana M. Williams

RE: Case Number MA 020278

To Whom It May Concern:

I would like to amend my complaint to the original complaint which was sent previously to your office. Certain evidence has been placed in my possession of retaliation and reprisal that was used against me. Sandralyne W. Esco and Joseph Stack had a letter of termination mailed to my home address. I receive this information after returning from the hospital on November 15, 2001. Joseph Stack had a meeting with the union president Roland Gordon stating, "Diana does not have any degrees she lied."

There has been vicious rumors, lies, and gossip dispense by Sandralyne W. Esco and Joseph Stack which caused me to be criminally investigated. I was forced to bring legal document of property that I had inherited, my tax returns and all three of my colleges degrees. But yet the taliban management of Esco and Stack continues to terrorize me. I received an unanimous phone call stating, "Sandralyne is bragging and boasting how she got rid of you. She is saying that you blew a statue date, you stole property, and you lost taxpayers cases." I do not appreciate people calling my house to warn me about fictitious acts of conspiracy that Ms. Esco is doing. I am now charging Ms. Esco and Mr. Stack with racial discrimination, harassment, retaliation, and reprisal against an employee.

Ms. Esco has a long list of secretaries who have left her management due to discrimination and harassment. Ms. Esco has never treated me with respect, dignity, or fairness. Ms. Esco would constantly search my desk inside and outside. My personal belongings would be constantly search my desk inside and outside. My personal belongings would always be distorted. On

November 1, 2001, I caught Ms. Esco going thru my personal belongings and work papers on my desk, and she removed something from the stack. As she proceeded to take this she left the office with this document (copy of complaint to OSC). Ms. Esco have searched my desk and work cabinet numerous times throughout my employment.

I meet with Sandralyne Esco and Roland Gordon for the first phase of my grievance, which was filed on October 11, 2001. It was within the meeting stated by Roland Gordon filed a second grievance against Ms. Esco based on stress due to health conditions. Ms. Esco stated in this meeting that she refuse to acknowledge and sign my request for sick leave for surgery.

I also have dates, times, and names of union representatives I spoke to and Ms. Esco would write me up or reprimand me talking to them. I was constantly harassed, intimidated, and threatened by Ms. Esco with the assistance of Joe Stack. On September 13, 2001, Joe Stack threatened me by saying, "Diana, Ms. Esco has your career in her hand." This statement was made I front of the union president as a witness. The manager corruption I received from Ms. Esco and Mr. Stack should be dealt with accordingly. As an employee I was harassed and intimidated, threatened and when I told the union representative about the manager corruption tactics leveled against me. I have several witnesses who have witness the hostile and embarrassing tactics did to me in the office.

I am enclosing a copy of the termination letter sent to me. I have given your office documentation of letters of reprimands.

I cannot stress this enough how Ms. Esco denied and refused my sick leave request and my medical certificate was discussed with other employees in which I stipulated this was a confidential matter. She did not approve my

request. Ms. Esco stated that, "I am pretending to be sick around here." Such behavior should not be tolerated I the work place. Please act upon this situation immediately.

Sincerely,

Diana M. Williams

Encl.

U.S. Office of Special Counsel
1730 M. Street, N.W., Suite 201
Washington, D.C. 20036-4505

Ms. Diana M. Williams
2921 Cherry Street
New Orleans, LA 70118

Re: OSC File No. MA-02-0278

Dear Ms. Williams:

The purpose of this letter is to notify you that you may have a right to seek corrective action from the Merit System Protection Board (MSPB). As we informed you in our closure letter of this date, we have terminated our inquiry into your allegations. Because you allege that you were the victim of the prohibited personnel practices described in 5 U.S.C. § 2302(b)(8), commonly called reprisal for whistleblowing, you may have the following rights.

You may seek corrective action from the MSPB under the provisions of 5 U.S.C. § 1214(a)(3) and 122 (individual right of action) for any personnel action taken or proposed to be taken against you because of a protected disclosure that was the subject of your complaint to this office. You must file a request for corrective action with the MSPB within 65 days after the date of the letter.

The Merit Systems Protection Board regulations concerning the rights to file an individual right of action with the Board can be found at 5 C.F.R., part 1209. If you choose to file such an appeal, you should submit this letter to the Board as part of your appeal.

Sincerely,

Angela D. Rush
Complaints Examiner
Complaints Examining Unit

TIGTA INVESTIGATION/FOIA

REFERRAL MEMORANDUM

1. Address of Receiving Official
Internal Revenue Service
5 Spiral Drive, Suite
Florence, KY 41042
Attn: IRS / CIRCU
2. Case Number - 68-0109-0009-I
3. Date forwarded - Dec 11, 2001

4. Title or Name of Subject: Employee Non- Employee
Diana M. Williams
XXX-XX-XX33
5. Position and Grade (If IRSE)
Secretary GS-5
6. IRSE's POD and Program Area - New Orleans
7. Supervisor's Name SANDRALYNE ESCO
8. Supervisor's POD and Phone Number - New Orleans
(504) 558-3207
10. TIGTA Report of Investigation forwarded for:
 Appropriate Action and Response
 Information Only - No Response Required
11. Criminal Features or Judicial Action - None
12. Related Case(s) Previously Referred
13. Remarks - Include brief statement of nature of allegations, i.e., UNAX, disclosure, Section 1203, embezzlement, etc. TIGTA received an allegation, which indicated WILLIAMS falsified information on employment application forms. During an interview with TIGTA, WILLIAMS denied providing false information to

APPENDIX E

anyone. During the course of the investigation, WILLIAMS resigned from IRS.

14. Signature and Title of Approving TIGTA Official

Richard Byrd, Jr, SAC Atlanta Field Division

15. Address and Telephone Number of TIGTA Office

Transmitting Report - TIGTA - New Orleans

600 S. Maestri Place, Stop 19
New Orleans, LA 70130
(504) 558-3400

16. Telephone Number of Transmitting Official -

Voice - (504) 558-3272

Fax- (504) 558-3410

Instructions to Receiving Official: The information contained in the attached copy of a Report of Investigation (ROI) represent the results conducted by the Treasury Inspector General for Tax Administration (TIGTA). The following are instructions as they related to the attached ROI and completion of this form:

- The information contained in this ROI should be disseminated on a need-to-know basis only.
- After action is completed, and it is no longer needed for an official purpose and if in accordance with applicable record retention schedules, destroy the attached ROI.
- If item 10 above indicated this report is being forwarded of "Appropriate Action and Responses", after final adjudication has been issued by the deciding official, document the information request in items 17-21 and return this form to the address shown in Item 15, or FAX to the number shown in item 16.
- In Item 18, include the ALERTS issue code(s) on which the action is based and provide a copy of any applicable documentation concerning the action taken.
- If the employee has resigned, retired, or for any reason is no longer employed, this information should be shown in Item 17.

17. Nature of Action - OTHER (Closed W/O Adjudication)

18. ALERTS Issue Code(s) (and description) on which

Action Based - 08 False Employment Inves

Forms Employee resigned 11/20/01. Case added to Alerts by CIRCU.

19. Name and Title of Adjudicating Official _____

20. Date Final Action is Proposed _____

21. Name Signature, Title and Office of Official
Returning This _____ Paulette Dionnes, CIRCU

22. Date Returned to TIGTA 12/14/01

MEMORANDUM OFF INTERVIEW OR ACTIVITY

Type of Activity Personal Interview

Date and Time: September 28, 2001 9:00 AM

Activity or Interview of: WILLIAMS, DIANA, M
IRS Group Secretary
Small Business Self
Employment Compliance
Area 8
New Orleans, LA

Conducted by: Special Agent James M. McFarland
Special Agent Melissa Chedotal

Location of Interview General for Tax Administration (TIGTA) New Orleans

Subject Matter/Remarks

On September 28, 2001, Internal Revenue Service (IRS) Secretary DIANA WILLIAMS was place under oath. WILLIAMS was advised she was the subject of an administrative investigation. WILLIAMS was advised this violation constituted a violation of the Interim Handbook of Employee Conduct and Ethical Behavior.

WILLIAMS was provided with and signed Internal Revenue Service (IRS) Form 8111, Employee Notification Regarding Union Representation. WILLIAMS was interviewed with National Treasury Employee Union (NTEU) Representative MAJORIE WHEELER present.

The allegation of the IRS Interim Rules of Conduct was read and explained to WILLIAMS, Internal Revenue Service (IRS) employees will not intentionally make false or misleading verbal or written statements in matters of official interest. WILLIAMS acknowledge she understand this section.

Williams was furnished a copy of Privacy Act Notice 417, Employee Interviews and the provisions of this notice were explain to her. WILLIAMS acknowledged receipt of the IRS Notice 417. A copy of the executed notice was given to WILLIAMS for her records. During the interview, WILLIAMS provided the following information.

WILLIAMS denied ever being legally married to anyone. WILLIAMS admitted she lived with JOSEPH REED in common-in-law.

WILLIAMS said she and REED live together intermittently for the past seven and half years. REED suffered a lengthy illness and finally succumbed to his diabetes on January 15, 2001. WILLIAMS moved into REED 's house on a permanent basis on December 27, 2000.

WILLIAMS said Civil District Court in New Orleans ordered she be Recognized as the sole legatee of REED's estate.

WILLIAMS denied filing false income tax returns. WILLIAMS said her taxes were always filed timely and she has never requested an extension to file.

MEMORANDUM OFF INTERVIEW OR ACTIVITY

Type of Activity Records Review

Date and Time: September 14, 2001

Activity or Interview of: Records Review of
Internal Revenue Service
(IRS) Integrated Data
Retrieval System
(IDRS) of DIANA M. WILLIAMS
XXX-XX-XX33

Conducted by: Special Agent James M. McFarland

Location of Interview General for Tax Administration (TIGTA) New Orleans

Subject Matter/Remarks

A records of review of Internal Revenue Service (IRS) automated record revealed DIANA M. WILLIAMS filed her 1998, 1999, and 2000 federal income tax returns listing her filing status as single.

MEMORANDUM OFF INTERVIEW OR ACTIVITY

Type of Activity Telephone Interview

Date and Time: December 5, 2001

Activity or Interview of : Miss Coleman

Clerk
Louisiana Vital Records
And Statistics
325 Loyola Avenue
New Orleans, LA
(504) 568-8383

Conducted by: Special Agent James M. McFarland

Location of Interview General for Tax Administration (TIGTA) New Orleans

Subject Matter/Remarks

During a telephone interview, Records and Statistics clerk COLEMAN said all Louisiana manage records are Systemically categorizes by date in the respect parish the license was issued. At this time, the State of Louisiana has no system in place to search marriage records using an individual's name.

MEMORANDUM OFF INTERVIEW OR ACTIVITY

Type of Activity Other

Date and Time: November 23, 2001

Activity or Interview of : Synopsis
Telephone Conversation
Secretary
DIANA M. WILLIAMS

Conducted by: Special Agent James M. McFarland

Location of Interview General for Tax Administration (TIGTA) New Orleans

Subject Matter/Remarks

During the week of November 19, 2001 thru November 23, 2001, Special Agent CHEDOTAL received various telephone call from WILLIAMS. WILLIAMS stated the following:

On November 19, 2001, WILLIAMS stated she receive a letter prosing her terminate or resignation. Territory Manager JOE STACK issued the letter on Friday, November 16, 2001. WILLIAMS stated she is currently at her mother's home, recuperating from surgery. WILLIAMS need to provide her response no later than November 21, 2001. She was notified of this by telephone.

WILLIAMS believe this is another example of the harassment and retaliation she has experienced while working at the Internal Revenue Service (IRS). WILLIAMS notified her supervisor, Group Manager SANDRALYNE ESCO, about her need to take extended leave, in relation to her surgery. WILLIAMS' doctor even provided a letter to confirm the medical reason for leave. ESCO stated WILLIAMS was lying about her medical condition. ESCO refused to approve any leave for WILLIAMS, even LEAVE Without Pay. And now, WILLIAMS has

been issued a letter proposing termination.

Special Agent CHEDOTAL advised WILLIAMS such complaints are the investigative jurisdiction of the Office of Special Counsel. Special Agent CHEDOTAL recommended WILLIAMS to report the matter to the Office Special Counsel. WILLIAMS stated she had reported previous incident of retaliation the Office of Special Counsel. Special Agent CHEDOTAL recommended WILLIAMS to report the proposed termination as an addendum to her previous complaint. Special Agent CHEDOTAL further advised the Treasury Inspector General for Tax Administration (TIGTA) could not assist her in the relation to the letter proposing her termination or resignation.

On November 20, 2001, WILLIAMS stated she decided to resign her position with the IRS. WILLIAMS stated STACK wanted her resignation in writing. WILLIAMS requested special Agent CHEDOTAL write and initial a resignation letter on her behalf, and provided said document to STACK. Special Agent CHEDOTAL advised WILLIAMS it would be inappropriate for a TIGTA employee to prepared and initial WILLIAMS resignation letter. WILLIAMS stated she understood.

On November 23, 2001, WILLIAMS stated she received an anonymous telephone call from someone at the IRS. The anonymous called advised WILLIAMS, ESCO was telling other IRS employees ESCO sending WILLIAMS a termination letter. Special Agent CHEDOTAL advised WILLIAM, ESCO had in essence, sent WILLIAMS a termination letter on November 16, 2001. Special Agent CHEDOTAL advised WILLIAMS to contact TIGTA if the IRS did not recognize the letter of resignation WILLIAMS submitted to STACK.

WILLIAMS then requested a TIGTA escort when WILLIAMS comes to the IRS to remove her personal belongings from her desk. Special

Agent CHEDOTAL advised WILLIAMS TIGTA does not conduct these types of escorts. Special Agent CHEDOTAL advised WILLIAMS to request building security of the IRS Criminal Investigation Division conduct the escort.

**Ms. Diana M. Williams
2921 Cherry Street
New Orleans, LA 70118
October 22, 2002**

**Office of Chief Counsel
Attention Disclosure Section
TIGTA
1111 Constitutional Avenue Northwest
Room 3039
Washington, DC 20224**

Dear Disclosure Section:

I would like to obtain a copy of Freedom of Information Act report which took place on September 28, 2001 at TIGTA New Orleans office investigated by agents "Jim and Melissa" and falsely initiated. I have no records why this investigation was done, the findings of this investigation, or why my freedom of private rights were violated. I would like this document as soon as possible. If you need to contact me, I can be reached at 504-896-1391. Please inform me about the final cost.

Sincerely,

Diana M. Williams

Ms. Diana M. Williams
2921 Cherry Street
New Orleans, LA 70118
November 8, 2001

Treasury Inspector General for Tax Administration
Office of Chief Counsel Disclosure Section
1125 15th Street, N.W.
Room 700A
Washington, DC 20005
Attn: Disclosure Officer

Dear Disclosure Section:

This a second request, I would like to obtain a copy of Freedom of Information Act report in which an investigation took place on September 28, 2001, at TIGTA New Orleans office investigated by agents "Jim and Melissa", I have no records of why this investigation was done, a valid reason who launched the investigation the findings of this investigation, or why my freedom of private rights were violated. I would like to receive this document as soon as possible. If you need to contact me, I can be reached at 504-896-1391. Please inform me of the final cost.

Sincerely,

Diana M. Williams

DEPARTMENT OF TREASURY

Washington, D.C.

Inspector general
For TAX
ADMINISTRATION

November 12, 2002

Dear Ms. Williams
2921 Cherry Street
New Orleans, LA 70118

This is in response to your Freedom of Information ACT (FOIA) request dated October 22, 2002, seeking access to record maintained by the Treasury inspector General for Tax Administration (TIGTA). We received your request on October 22, 2002.

We are sorry, but must ask for additional time to locate and consider releasing the records responsive to your FIOA request. We process FOIA request on a first in, first out basis and we will make every effort to respond to your request as soon as possible.

If you agree to this extension of time, no reply to this letter is necessary. You will still have the right to file an administrative appeal if we subsequently deny your request.

We hope that you will agree to a voluntary extension of time. If you do not agree, you have the right to consider this as a denial and, if you wish, immediately file an appeal. We have enclosed an information Sheet, which explains your appeal rights.

Thank you for your cooperation. If you have any questions, please feel free to contact Program Analyst, Zsatique Ferrell at (202) 927-7032

Sincerely,

Melissa Stuart
Disclosure

Enclosure

Desiree M. Charbonnet

STATE OF LOUISIANA-PARISH OF ORLEANS

RECORDER OF MORTAGES

I Desiree Charbonnet RECORDER OF MORTAGES FOR THE PARISH OF ORLEANS, CERTIFY THAT THIS CERTIFICATE HAS BEEN EXCLUSIVELY IN THE EXACT NAMES HEREUNDER SET FORTH AND NOT IN ANY VARIATIONS OF SAID NAMES.

WHERE NO MIDDLE INITIALS HAVE BEEN FURNISHED IDENTICAL NAMES WITH MIDDLE INITIALS HAVE NOT BEEN RUN AND WILL NOT BE UNLESS SPECIALLY REQUESTED.

SUBJECT TO THESE RESTRICTIONS AND EXCEPTIONS, I CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO UNCALLED ENCUMBRANCES RECORDED IN THE EXACT NAMES HEREINAFTER SET FORTH EXCEPT THE FOLLOWING WHICH BEAR AGAINST THE PROPERTY DESCRIBED HEREUNDER, TO-WIT:

Inscriptions recorded after September 20, 1987 are reported on a separate Computer Generated Form

Joseph Reed

THAT CERTAIN PIECE OF PORTION OF GROUND, together with all the buildings and improvements thereon and all rights ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the THIRD DISTRICT of the City of New Orleans, State of Louisiana, Parish of Orleans, in that part known as PONTCHARTRAIN PARK SUBDIVISION, according to plan survey by F.C. Gandflo, Jr., Sur. Dated December 29, 1960 upon which said portion of ground is designated as follows:

LOT NO. 4 of SQUARE NO. 31 bounded by PRESSBURG STREET, PROVIDENCE PLACE VIENNA COURT (side) and CAMPUS BOULEVARD (SIDE) and measures a distance of One hundred feet (100) from the corner of Pressburg Street and Campus Blv. and thence has a front of fifty feet (50) on Pressburg Street.

Being further acquired by Joseph Reed, Sr. by Judgment of property settlement recorded
under Conveyance Office Instruct No. 197865

- -THAN - -

FTL23-376 FEDERAL TAX LIEN JOSEPH REED JR.
 FAVOR U.S.A \$633.27 INT.ECT
5-23-86 SERIAL #O.B. 14537 5-4-83

FTL23-377 FEDERAL TAX LIEN JOSEPH AND
 ORDELLA REED FAVOR U.S.A.
5-23-83 \$1,398.52 INT. ETC. SERIAL #O.B.
 145363

383973 FEDERAL TAX LIEN
 REED, JOSEPH HVP/WER
9/19/1996 SERIAL #729610131 &7,389.94
 REV - USA

CPM 2000-8

U.S. Office of Personnel Management

June 12, 2000

MEMORANDUM FOR DIRECTORS OF PERSONNEL

FROM: JANICE R. LACHANCE
DIRECTOR

SUBJECT: Final Regulations on Sick Leave to
Care for a Family Member with a
Serious Health Condition

On Saturday, June 10, President Clinton announced that the Federal Government is establishing an expanded sick leave policy for Federal employees. To implement this policy, the Office of Personnel Management (OPM) will issue final regulations tomorrow, June 13. The final regulations, an employee may use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. This benefit broadens the options available for employees to meet their family responsibilities.

The definition of "family member" sick leave purpose remains unchanged. It includes the following relatives of the employee: (a) spouse and parents thereof; (b) children, including adopted children and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. "Serious health condition has the same meaning as found in OPM's regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993. (FMLA).

You may view a copy of the regulations on OPM's web site at
<http://www.opm/fedregis/index.htm>. In addition, questions and answers on the administration of this new entitlement are posted at

APPENDIX F

<http://www.opm.gov/oca/leave/html/slQ&A>. I also encourage you to share with your employees that fact sheet on "Sick Leave for Care of a Family Member with a Serious Health Condition" available at <http://www.opm.gov/oca/leave/html/12week.htm>. For further information, please contact our Pay and Leave Administration on Division by calling (202) 606-2858, sending a FAX to (202) 606-0824, or sending an email message to pay_leave@opmlgov.

Doctor certificate #1

The Women's Laser Institute

Gynecology * Fertility * Laser Microsurgery

Transmitted via Facsimile
(504) 558-3098

Myron E. Moorehead, M.D.

October 26, 2001

To Whom It May Concern:

RE: Diana M. Williams

This patient is scheduled for major gynecological surgery at Kenner Regional Medical Center on Tuesday, November 13, 2001. With no unforeseen complications, Ms. Williams can be expected to return to her normal work activities after a six (6) weeks convalescence, or effective December 27, 2001. If there are any further questions and/or comments regarding this matter, please feel free to contact our office.

Sincerely,

Myron E. Moorehead, M.D.
The Women's Laser Institute
Director

Doctor certificate #2

The Women's Laser Institute

Gynecology * Fertility * Laser Microsurgery

Myron E. Moorehead, M.D.

November 12, 2001

RE: Diana M. Williams

This patient was seen in the office on Monday , November 5, 2001 and Wednesday, November 7, 2001 for pre-operative testing. She has been instructed to be on completed bed rest until her scheduled surgery on Tuesday, November 13, 2001.

If there any additional questions, please contact the office.

Sincerely,

Myron E. Moorehead, M.D.
Director, The Women's Laser Institute

Doctor certificate #3

MARCIA G. BEARD, Ph.D.
Clinical Psychologist

November 8, 2001

740 Dante Street
New Orleans, LA 70118

Phone: (504) 864-0067
Fax: (504) 864-0010

To Whom It May Concern:

Ms. Diana M. Williams was seen by me today, November 8, 2001, for related Stress. I have recommended that Ms. Williams not return not return to work Tomorrow, November 9, 2001.

Sincerely yours,

MEMORANDUM

October 30, 2001

TO: Ms. Sandralyne Esco
FROM: Ms. Diana M. Williams
RE: Emergency Leave for Surgery
CC: Memo of Record

I Diana M. Williams am requesting to take an emergency sick leave effective November 13, 2001 for a period of 4 to 6 weeks. Beginning November 13, 2001 and ending December 27, 2001 or earlier if my health permits. I know that I am a probationary employee and due to my extreme health conditions, it is advisable by my physician to have surgery immediately. Due to this delicate and confidential information I would ask that you this matter be treated with the utmost respect, dignity, and confidentiality.

I would like to utilize my sick leave and my annual leave to compensate me since I am the sole provider of my household. After both leaves are exhausted, I would then like to acquire advance sick to be charge to my account or if not permissible to take leave without pay. During this difficult and immediate request I would appreciate any recommendations that you might offer. Thank you for your time and understanding in the extreme situation.

Attachment

MEMORANDUM

October 31, 2001

TO: Ms. Sandralyne Esco
FROM: Ms. Diana M. Williams
RE: Emergency Leave for Surgery
CC: Memo of Record

I Diana M. Williams am requesting to take an emergency sick leave effective November 13, 2001 for a period of 4 to 6 weeks. Beginning November 13, 2001 and ending December 27, 2001 or earlier if my health permits. The hours that I am requesting are 192-232 respectively; there is a possibility that I might return before the six-week period is up. I know that I am a probationary employee and due to my extreme health conditions, it is advisable by my physician to have surgery immediately. Due to this delicate and confidential information I would ask that this matter be treated with the utmost respect, dignity, and confidentiality.

I would like to utilize my sick leave and my annual leave to compensate me since I am the sole provider of my household. After both leaves are exhausted, I would then like to acquire advance sick to be charge to my account or if not permissible to take leave without pay. During this difficult and immediate request I would appreciate any recommendations that you might offer. Thank you for our time and understanding in the extreme situation.

Attachment

REQUEST FOR ADVANCED SICK LEAVE

This portion of the form to be completed by the employee:

Name of Employee: Diana M. Williams Group 1557

Numbers of Hours Requested: 232

Dates Leave to be taken: From 11-13-01 To 12-27-01

Reason for Request: Emergency Surgery

This portion of the form to be completed by the employee's immediate manager:

1. Is the employee eligible to earn sick leave?
2. a. Current Balance hours
 b. Amount Recommended for Approval hours
 c. Amount Advances Sick Leave Used This Leave Year hours
 (The amount approved cannot exceed 240 hours for the entire
 leave year)
3. Do you have any reason to believe that the employee will not return
 to work after having used this leave?
4. Has the employee provided acceptable medical documentation of the
 need for the advances sick leave?
5. Is the employee under a leave restriction letter?

I certify that the employee has met all of the conditions for approval of the
advance sick leave indicated above.

Signature of Manager

Date

Signature of Territory
Manager

Date

Approved
Area Director

Hours

Disapproved
Date

OCHSNER CLINIC FOUNDATION

1514 Jefferson Hwy.
New Orleans, LA 70121 11/5/01

Ms. Diana M. Williams Age _____

Address _____

Rx Miualax

Disp one bottle

Sig cap capful in 8oz H2O daily

Refill one

Dr. Gloria Leary, MD

Discharge/Medications

Release from Kenner Regional Hospital on November 15, 2001, specific medical instructions, also received three (4) prescriptions.

Patient Diana Williams 42 year old female was discharged from Kenner Regional Hospital after an uneventful postoperative course, the patient was discharge on: (1) **Ferrous sequels one tablet daily**, (2) **Doxycycline 100 mg. twice a day**, (3) **Danocrine 200mg three times a day**, and (4) **Motrin 800 mg. every six hours for pain**. The patient was released in satisfactory condition on restricted activity with instructions to be seen in two weeks for follow up examination.

CONFIDENTIAL

April 10, 2002

To: Congressman William Jefferson

From: Ms. Diana M. Williams

RE: Prohibited Personnel Practices

FAX: 504-589-4513

My name is Diana M. Williams, I was employed by the Internal Revenue Service until November 2001, in which the outlaw management team GS-13 and GS-15 managers sent termination papers to my home address while I was in the hospital for major surgery. The following prohibited personnel practices that were levied against me are as follows:

1. Refusal to accept/approve a doctor's certificate stating surgery, length of time to be out, a diagnosis, and when I would be able to return back to work.
2. Refusal to train me for the position I was hired for.
3. Discriminatory, harassment practices and tactics my immediate manager GS-13 and other solicit managers she befriended.
4. Discrimination of my marital status which lead to a criminal investigation.
5. Reprisal and retaliation against me for filing grievances.
6. Constant verbal and written reprimands because of my affiliation with all union representatives and the union president.

APPENDIX G

7. Discrimination age, gender, and race.

I would like to send you confidential documentation of the humiliation and degradation I suffered at the hands of the managers at the IRS. This harsh and unprofessional demeanor has caused serious hardships and I have lost my medical insurance benefits since my surgery. I have also filed a complaint with the Office of Special Counsel in Washington but, I do not know the status or scope of this matter. I have contacted the Office of Personnel Management, in which they referred that I should contact your office. Several employees of the IRS had first had knowledge concerning the termination papers that were sent to my address. Censorship and confidentiality is lacking in this organization, and I also have received telephone calls from federal employees from other agencies concerning the termination papers that was addressed to me.

I hope you would be able to assist me or give some information what can be done about this matter. I have not been able obtain federal employment.
I am being **BLACK BALL** by my ex-supervisor.

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

CHARGE AGAINST AN AGENCY

1. Charge Activity or Agency

Name: Internal Revenue Service
Address: 600 S. Maestri Place
New Orleans, LA 70130
Tel.# (504) 558-3207

2. Charging Party

Name: Diana M. Williams
Address: 2921 Cherry Street
New Orleans, LA 70118
Tel.# (504) 482-1313

3. Charged Activity or Agency Contact Information

Name: Internal Revenue Service
Title: Howard Schwartz
Address: 600 S. Maestri Place
New Orleans, LA 70130

4. Charging Party Contact Information

Name: Diana M. Williams
Title: Secretary
Address: 2921 Cherry Street
New Orleans, LA 70118

5. Which subsection(s) of 5 U.S.C. 7118(a) do you believe have been violated? (See reversed) (1) and

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

Sandralyne W. Esco Manager GS-13 constantly gave me written reprimands which was a form of harassment tactics. **August 10 and September 25, 2001** written reprimand issued for volunteering to work at my desk to catch up a back load of work. **September 13, 2001**, Joseph Stack, Territory Manager GS-15 barred me from transferring into another manager's group who requested to have me transferred without my personal knowledge. This meeting took place with Joe Stack, Sandralyne Esco, Roland Gordon, union president, and myself. **September 28, 2001**, Ms. Esco made a written complaint to TIGTA investigation department concerning my marital status and federal income tax. **October 11, 2001**. Mr. Gordon, union president filed a grievance on my behalf against Ms. Esco for creating a hostile working environment. Ms. Esco launched a personal attack on me by giving a seven page reprimand which was dated **October 12, 2001**, but signed to me on **October 17, 2001**. **October 14, 2001**, Ms. Esco refused to signed my application for employment in another section, she referred me back to the meeting on **September 13, 2001** that I am not allowed to apply for any position in the Internal Revenue Service. **October 29, 2001** I requested medical leave in waiting and presented Ms. Esco with a fax doctor's certificate waiting for the arrival of the original document. Ms. Esco refused to accept and signed the document and stated I had no business asking for medical leave (Surgery date **November 13, 2001** also with upcoming doctors appointments starting on **November 5, 2001**) off since I am a probational employee and I was pretending to be sick. **November 2, 2001**, I meet with Ms. Esco and Mr. Gordon concerning my grievance which was filed **October 11, 2001**, to no avail the meeting was cut short. Mr. Gordon filed a second grievance against Ms. Esco for retaliation and reprisal because of the written reprimand issued in October. **November 6, 2001** letter of termination sent by Mr. Stack to my home address. I did not received this letter until my arrival back home from the hospital. **November 8, 2001**, received letter from employee assistance doctor stating I should find employment elsewhere and I should not go to work on **November 9, 2001**. I am no longer a federal employee due to the tactics of Ms. Esco and Mr. Stack, I have also lost my medical insurance since the operation. They have placed

me in a financial hardship. I was constantly reprimand and harassed when talking to any union representative or the president. Ms. Esco also had other managers calling her with my whereabouts and I was not properly trained for the job duties in her office. I would solicit help from other staff members which Ms. Esco would hostilely reprimand and degrade me.

